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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1459

UNITED STATES OF AMERICA,
Petitioner,

versus

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL,
Respondents.

BRIEF OF LITTLE LAKE MISERE LAND COMPANY, INC., ET AL, RESPONDENTS, IN OPPOSITION TO THE APPLICATION OF THE UNITED STATES FOR WRIT OF CERTIORARI.

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BRIEF OF LITTLE LAKE MISERE LAND COMPANY, INC., ET AL, RESPONDENTS, IN OPPOSITION TO THE APPLICATION OF THE UNITED STATES FOR WRIT OF CERTIORARI

STATEMENT

The application of the United States fairly sets forth the undisputed facts in this case, and they will not be repeated here.

It is felt that in reviewing the history of the *Leiter Minerals* litigation, greater attention could have been paid in the application to the vital advisory opinion of the Louisiana Supreme Court in *Leiter Minerals, Inc. v. California Co.*, 241 La. 915, 132 So.2d 845 (1961). Also, there seems to be justified a more detailed analysis of this Court's decision in *Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957). More extensive discussions of these decisions will be made later in this brief.

ARGUMENT

It is known that the Solicitor General, on behalf of the United States, attempts as a matter of policy to restrict application for writs of certiorari to this Court to cases involving questions of unusual importance or issues that are vital to the Government. Nevertheless, it is submitted that in selecting this case for application, a clear error of judgment was made.

The only possible grounds that can be invoked by the United States to justify its present application under Rule 19 of the Rules of this Court are (1) that the Court below has decided an important question of federal law which has not been, but should be, settled by this Court, or (2) that it has decided a federal question in a way in conflict with applicable decisions of this Court. It can easily be demonstrated that neither of these conditions exists, but rather that to the contrary, the Government is being forced to challenge settled decisions of this Court against its contentions. In fact, on one of the initial issues raised in the application (the applicability of state law or federal law) it will be shown later that this Court is being asked to overrule or at least emasculate its own decision in *Leiter Minerals, Inc. v. United States*[1] on the applicability of Louisiana Act 315 of 1940, the State statute that is directly at issue in the present case.

As nearly as is possible of accomplishment, this opposition brief will discuss the issues in the order that they were presented in the Government's application.

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[1]352 U.S. 220 (1957).

An exception must be made, however, to consider first the all-important question as to whether state law (Louisiana Act 315 of 1940) or federal law is controlling in construing the mineral claims of the Government.

State Law Rather Than Federal Law Must Be Applied In Determining The Government's Present Claim To The Mineral Rights In These Properties.

Laying aside for later discussion the constitutional issues raised by the United States, the initial issue is whether in connection with these two isolated acquisitions of Louisiana real property by the Government, Federal law must be held to be paramount and controlling and the applicable Louisiana law must therefore be disregarded.

The obvious purpose of the Government's application is to have this Court review and overturn the decision of the Fifth Circuit Court of Appeals in *Leiter Minerals, Inc. v. United States*, 329 F.2d 85 (5th Cir. 1964) (herein *Fifth Circuit - Leiter*). That decision held that Louisiana Act 315 of 1940 applied to a similar reservation by the United States and that it was constitutional. The present effort of the United States would be accomplished by obtaining a ruling from this Court that federal law rather than state law should be applied here in determining whether the mineral rights originally reserved by the United States are still in effect, thereby ignoring Act 315 of 1940 and the interpretation of that statute made by the Supreme Court of Louisiana.[2]

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[2]*Leiter Minerals, Inc. v. California Co.*, 241 La. 915, 132 So.2d 845 (1961).

As was previously noted, the end result of upholding the Government's arguments on this point would be the modification and emasculation of the prior decision of this Court in *Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (herein *Supreme Court - Leiter*). A brief review of the somewhat turbulent history of the *Leiter* litigation will readily substantiate this statement.

Just as occurred in the present case, the federal judicial proceedings in *Leiter* commenced with a District Court action by the Government to quiet its title to mineral rights that had been reserved from a sale to the United States. The only irrelevant difference was that *Leiter* included a request for the staying of further proceedings in the State Court on the same issue. After wending its way through the District Court[3] and the Fifth Circuit Court of Appeals[4], writ of certiorari was granted by this Court which resulted in its 1957 ruling in *Supreme Court - Leiter*.[5] Squarely before the Court was the question of whether Louisiana Act 315 of 1940 should be applied and, if so, the determination of the proper interpretation of that statute. This Court, through Justice Frankfurter, then ruled quite explicitly that the interpretation of the 1940 Louisiana statute was a matter of State law and that, therefore, a construction of the Act should be obtained from the Louisiana Supreme Court. In so doing, this was said:

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[3]*United States v. Leiter Minerals, Inc.*, 127 F.Supp. 439 (E.D.La. 1954).

[4]*Leiter Minerals, Inc. v. United States*, 224 F.2d 381 (5th Cir. 1955).

[5]*Leiter Minerals, Inc. v. United States*, 352 U.S. 220 (1957).

"... The Supreme Court of Louisiana has never considered the specific issue or even discussed generally the rationale of the statute, especially with reference to problems of constitutionality. The District Court recognized the importance of the statute in deciding this case; it also recognized that a problem of interpretation was involved, that the statute cannot be read by him who runs. What are the situations to which the statute is applicable? Is the statute merely declaratory of prior Louisiana law? What are the problems that it was designed to meet? The answers to these questions are or may be relevant. Before attempting to answer them and to decide their relation to the issues in the case, *we think it advisable to have an interpretation, if possible, of the state statute by the only court that can interpret the statute with finality, the Louisiana Supreme Court.* (352 U.S. at 229.) (Emphasis added.)

If there could be any question concerning the effect of this ruling, it definitely was dispelled by the dissenting opinion of Justice Douglas, who argued that the federal court should decide the issue without regard to the interpretation of the state court.[6]

If as now contended by the United States, federal law should be held to be paramount to the exclusion of the State statute, this Court would obviously have done a vain and useless thing in *Supreme Court* -

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[6]352 U.S. 220, 231.

Leiter in directing the remand of the case to the Louisiana Supreme Court for an interpretation of the State act and a consideration of its constitutionality. On the other hand, if *Supreme Court - Leiter* is to be followed, Louisiana Act 315 of 1940 as interpreted by the highest court of that State must be held to be applicable, and there remains in this case only the issue of whether it can be constitutionally applied to the mineral rights reserved in the transfers to the United States.

The *Supreme Court - Leiter* decision does not stand alone on this point. Where only specific and isolated acquisitions of real property are involved and in the absence of specific Congressional action national in scope or a determination of the existence of an overpowering constitutional interest in the United States, state law is uniformly applied to such transactions. This is based on the concept that the states possess the power to regulate the tenure of real property within their respective limits and the modes of its acquisition and transfer. *United States v. Fox*, 94 U.S. (4 Otto) 315 (1877); *United States v. Burnison*, 339 U.S. 87 (1950); *Mason v. United States*, 260 U.S. 545 (1923); *Sunderland v. United States*, 266 U.S. 226 (1924); *Davies Warehouse Co. v. Bowles*, 321 U.S. 144 (1944); *United States v. Yazell*, 382 U.S. 341 (1966). In *United States v. Yazell*, this Court ruled that in the absence of specific Congressional action the federal court should not override state law unless compelled to do so by clear and substantial interests of the national government; and in so ruling, this was said:

> "The decisions of this Court do not compel or embrace the result sought by the Government. None of the cases in which this Court has devised and applied a federal principle of law superseding state law involved an issue arising from an individually negotiated contract." (382 U.S. at 353.)

Conversely, the United States can invoke state laws for the protection of its own property interests within that state. *Cotton v. United States,* 52 U.S. (11 How.) 228, 231 (1850).

Finally, this Court has again spoken on the subject contrary to the present arguments of the United States in the recent decision of *Wallis v. Pan American Petroleum Corp.,* 384 U.S. 63 (1966). There was involved in that case the enforcement of an option agreement relating to the acquisition of a federal lease, which clearly involved the rights of the United States in the future enforcement and management of that lease contract. Nevertheless, this Court held that state law rather than federal law should be applied in interpreting the agreement.

In its present application, the United States seeks to justify its contention that federal law should be imposed to the exclusion of Louisiana Act 315 of 1940 by invoking the "Clearfield Trust" doctrine. Offered as support of its contention are such decisions as *United States v. Allegheny County,* 322 U.S. 174 (1944); *Ivanhoe Irrigation District v. McCracken,* 357 U.S. 275 (1958) and *Clearfield Trust Co. v. United States,* 318

U.S. 363 (1943). These cases and all other decisions offered in the Government's application on this point clearly are inapposite. All presented situations either (1) where the action of the Government was derived from constitutional authority, or (2) where the necessity for a uniform application of a federal statute national in scope was apparent, or (3) where some significant threat to the constitutional functions of the United States would be present. For example, in *Allegheny County* there was involved the question whether a war contract made by the Federal Government under its constitutional powers was immune from limitation (by taxation) under state law. *Ivanhoe Irrigation District v. McCracken* simply applied the well-settled rule that a state cannot compel the use of federal property on terms contradictory to those specifically prescribed by Congress; and in *Clearfield Trust Co. v. United States*, it was held that the rights and duties of the United States in the handling of its commercial paper are governed by federal law since the Government is disbursing its funds or paying its debts in the exercise of a constitutional function. These decisions are in sharp contrast to the situation involved here where the Government has simply acquired real property in a proprietary capacity, and as to such property, it seems clear that the quoted language from *United States v. Yazell* becomes applicable.[7]

The Constitutional Questions

At the outset, serious doubt must be expressed as to whether the United States can properly attack the

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[7] *Supra*, p. 6.

constitutionality of Act 315 of 1940 before this Court. That issue was not raised as an affirmative claim in the government's pleadings in the District Court and it cannot now be asserted in the briefs before this Court. *Kewanee Oil & Gas Company v. Mossham-er*, 58 F.2d 711 (10th Cir. 1932); *Pigott v. Detroit, T. & I. R.R.*, 221 F.2d 736 (6th Cir. 1955); *United States v. Nudelman*, 104 F.2d 549 (7th Cir. 1939); *Alexander v. Daugherty*, 189 F.Supp. 956 (D.C.Wyo. 1960); *Gaines W. Harrison & Sons, Inc. v. J. I. Case Company*, 180 F.Supp. 243 (E.D.S.C. 1960); *Houck v. Eastchester Public Utility District*, 104 F.Supp. 588 (D.Alaska 1952); *Mount Tivy Winery, Inc. v. Lewis*, 42 F.Supp. 636 (N.D.Cal. 1942) and *White Cleaners and Dyers v. Hughes*, 7 F.Supp. 1017 (W.D.La. 1934). There has been no abrupt change in the law since this action was filed, *cf. Curtis Publishing Company v. Butts*, 351 F.2d 702 (5th Cir. 1965) and therefore the United States should be barred from asserting the constitutional questions since they were not affirmatively raised in the Lower Court.

Nevertheless, it can be effectively shown that the constitutional issues now raised by the Government are not valid.

The Application of Louisiana Act 315 of 1940 Does Not Violate Either the Property Clause or the Contract Clause of the United States Constitution.

It seems important at this point to analyze both the basic and juridical nature of the mineral rights originally reserved by the defendants in the two transfers

to the United States and of the rights and expectancies of the United States in hoping that these minerals would later revert to it. The latter under Louisiana law are termed "reversionary rights." The Court is referred to an excellent analysis of these subjects by the Fifth Circuit Court of Appeals in *United States v. Nebo Oil Company*,[8] where Act 315 of 1940 was applied and was found to be constitutional.

Under the civil law of Louisiana, there can be no separate corporeal mineral estate in oil and gas and in the rights to such minerals. The reservation of mineral rights creates only a servitude (easement under common law). That servitude is extinguished by the prescription (limitation) of ten years unless it is exercised within that time by user through drilling operations or production. However, such user of the servitude in this manner will interrupt prescription and preserve the rights for another ten years.[9]

Under the same civil law yardstick, estates in reversion are unknown to Louisiana law. As a result, the reversionary rights of the United States to the mineral rights involved here could not be sold during the existence of the outstanding servitudes in favor of defendants.[10] The nature of the Government's interest or expectancy to obtain the reversion of these mineral rights was succinctly explained in *Nebo* as follows:

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[8]*United States v. Nebo Oil Company*, 190 F.2d 1003 (5th Cir. 1951).

[9]*Frost-Johnson Lumber Co. v. Nabors Oil & Gas Co.*, 149 La. 100, 88 So. 723 (1921); *Louisiana Petroleum Co. v. Broussard*, 172 La. 613, 135 So. 1 (1931); *Lee v. Giauque*, 154 La. 491, 97 So. 669 (1923); La. Civ. Code Arts. 789, 3546 (1870).

[10]*Liberty Farms v. Miller*, 216 La. 1023, 45 So.2d 610 (1950).

> "We conclude that this so-called "reversionary interest" is nothing more than a mere expectancy, or hope, based upon an anticipated continuance without change of the applicable laws of prescription and cannot be regarded as a vested right protected by the Constitution."[11]

On this point, the Court held in *Nebo* that the decision of the Louisiana Supreme Court in *Whitney National Bank v. Little Creek Oil Company*[12] regarding the retrospective character of Act 315 of 1940 when applied to this expectancy or hope was an interpretation of the State statute which "is binding on this Court."

There is under Louisiana law another type of reservation of minerals which falls in the precise legal category as the ordinary mineral reservation just discussed. This comes into being when the parties to the contract establish a mineral servitude of uncertain and indefinite duration and provide for its conditional extinguishment. They thereby create a condition of "contractual prescription" which places the reservation in exactly the same legal status as an ordinary mineral servitude.

In the all-important advisory opinion rendered by the Louisiana Supreme Court in *Leiter*, the principles

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[11]*United States v. Nebo Oil Co.*, 190 F.2d 1003, 1009 (1951).
[12]*Whitney National Bank v. Little Creek Oil Company*, 212 La. 949, 33 So.2d 693 (1947).

governing the establishment of a period of contractual prescription were clearly enunciated as follows:

> "If the United States Supreme Court concludes, as argued by counsel for Leiter, that the reservation does not establish a servitude for a certain time or of specific duration but establishes one of uncertain and indefinite duration, and that it was the intention of the parties to fix by contract the period of liberative prescription, then Act 315 of 1940 is applicable and constitutional.
>
> * * * *
>
> "Most mineral servitudes are not established for a fixed time. A servitude of indefinite duration is extinguished only when it is not exercised for a period of 10 years. Such a servitude created by mineral reservation in a sale to the government would, under Act 315 of 1940, be rendered imprescriptible and would never be lost by prescription, provided it was in existence at the time the 1940 act went into effect.
>
> * * * *
>
> "To summarize in conclusion, it is our view, and we hold: First, that if the reservation in the Leiter deed is construed as establishing a mineral servitude for a definite, fixed, and specified time which has elapsed, then Act

315 of 1940 is not applicable and cannot be constitutionally applied; *and second, that if the reservation is construed as not establishing a servitude for a fixed, definite and certain time, and if it is decided that the provisions of the reservation show that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created, then Act 315 of 1940 is applicable and constitutional. The interpretation of the contract is for the United States courts.*" (Emphasis added.)[13]

While recognizing the paramount right of the federal courts to construe finally the mineral reservation in *Leiter*, the Louisiana Supreme Court clearly evidenced its own conclusion that the mineral reservation in that case created a condition of contractual prescription which was subject to Act 315 of 1940.

By a mere reading of the plain language of the mineral reservations involved in this case, the inescapable conclusion must be reached that they established servitudes of indefinite and uncertain duration.[14] They were initially established for a period of ten years, at the expiration of which they were to expire unless drilling operations had been commenced. This provision merely restates the law of Louisiana as to mineral servi-

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[13]*Leiter Minerals, Inc. v. California Co.*, 132 So.2d 845, at 853, 854 (1961).

[14]The reservation in the condemnation acquisition, which is functionally identical to the reservation in the purchase acquisition, is quoted in full in Appendix A.

tudes. There then followed the key provision which clearly established a contractual prescription in the following language: "or so long thereafter [the 10 year period] as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and if production results, so long as such mineral is produced." There is nothing remotely resembling a fixed and definite period in this language; rather, the continuation of the servitude depends upon two uncertain and indefinite conditions, these being, first, whether Lake Misere would conduct drilling operations at sixty-day intervals and, secondly, whether production would result from these operations. These conditions fall in the indefinite and uncertain category far more clearly than the one involved in *Leiter* which did have several fixed dates.

The District Court in the present case held that "clearly the provisions of the reservations in the instant cases reveal that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes."[15] The Fifth Circuit Court fully agreed.[16]

Once it is recognized that the mineral reservations in this case were of uncertain duration and provided for a period of contractual prescription, all of the Government's arguments in this application concerning

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[15] *United States v. Little Lake Misere Land Company, Inc.*, Civil No. 14,588 (W.D.La. 1971).

[16] *United States v. Little Lake Misere Land Company, Inc.*, 453 F.2d 360 (5th Cir., 1972)

the impairment of the Property Clause and Contract Clause of the Constitution become completely inapplicable. Under well-settled principles of both state and federal law, the laws of prescription and those limiting the time within which actions may be brought are retrospective in their operation. As to the state rule, see *DeArmas v. DeArmas*, 3 La.Ann. 526 (1848); *Shreveport Long Leaf Lumber Co., Inc. v. Wilson*, 195 La. 814, 197 So. 566 (1940); *State v. Alden Mills*, 202 La. 416, 12 So.2d 204 (1943). In *Whitney National Bank of New Orleans v. Little Creek Oil Company, Inc.*, 212 La. 949, 33 So.2d 693 (1947) the Supreme Court of Louisiana gave a retrospective effect to the very act involved in the present case (Act 315 of 1940), and this in connection with a reservation of minerals in a sale to the United States.

The federal law is equally as clear that statutes of limitations and the remedies created thereby do not form a part of the contract and may be modified or abrogated with respect to a pre-existing contract. *Ogden v. Sanders*, 25 U.S. (12 Wheat.) 213 (1827); *Campbell v. Holt*, 115 U.S. 620 (1885); *Atchafalaya Land Co. v. F. B. Williams Cypress Co.*, 258 U.S. 190 (1922) and *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945). In *Campbell v. Holt*, this Court even extended the rule to upholding state action in extending a statute of limitation after the right of action had been barred under the original statute, thereby restoring to the plaintiff his remedy. In enunciating this rather drastic conclusion, the Court noted, "It violates no right of his, there-

fore, when the legislature says time shall be no bar, though such was the law when the contract was made." *Chase Securities Corp. v. Donaldson* reaffirmed the *Campbell* case on this point.

No useful purpose would be served by discussing the several decisions offered by the United States in support of its Property Clause and Contract Clause arguments. All dealt with the impairment of rights that unquestionably were vested property or contract interests. It is clear that in the present case such a vested property right was not created by the "reversionary interest" of the United States with respect to the mineral rights reserved in these two transactions. Act 315 of 1940 could and did validly modify that reversionary interest so as to make the mineral rights of the defendants imprescriptible.

The Hostile Discrimination Charge

The Government suggests that Act 315 of 1940 singles out the United States and its lessees for hostile discrimination in the acquisition of interest in lands, this in violation of the Equal Protection Clause of the Fourteenth Amendment. The application for writ properly notes that there are no federal decisions holding the United States to be a "person" entitled to the protection of the Fourteenth Amendment and that this proposition was seriously questioned by this Court in *United States v. Burnison*, 339 U.S. 87, 95 (1950). The Government persists in its contention, however, that a state cannot discriminate against federal interests.

The hostile discrimination theory has twice been rejected by this Court, and the present contention of the Government represents the third frontal assault upon the law as firmly established. In *United States v. Fox*, 94 U.S. (4 Otto.) 315 (1877), this Court upheld a statute of the State of New York which had been construed to prevent the devise by will of the property of a decedent to the United States. The bequest to the Government was therefore nullified. The issue was again raised in *United States v. Burnison*, 339 U.S. 87 (1950), where the Court considered a California statute which prohibited an unrestricted testamentary gift to the United States, although it permitted such gifts to the State and its subsidiaries. The Court recognized that it was being called on to overrule the *Fox* case and firmly refused to do so. It found no arbitrary treatment of the Government and therefore rejected the claim of unconstitutional discrimination.

Factually, however, a situation of hostile discrimination simply does not exist in this case. By a separate statute, the State of Louisiana has imposed the identical imprescriptible rule on all acquisitions made by its own agencies. La. R.S. 9:5806B (Supp. 1972)[17]. Also, individual Louisiana citizens as well as governmental entities have been affected by legislation changing the rule of prescription. Prior to 1944, the law of Louisiana was firmly to the effect that the ownership of an interest in a mineral servitude by a minor suspended the running of prescription not only as to

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[17]It is interesting to note that the United States, while persisting in its claim of unilateral hostile discrimination, terms this equal treatment by the State of its own agencies as irrelevant. Fn. 8, p. 18, writ application.

the minor but also as to his major co-owners. Act 232 of 1944 changed this law to provide that:

> ". . . despite the fact that among co-proprietors of any mineral . . . right there may be . . . a minor, the liberative prescription shall nevertheless run against the co-proprietors not under legal disability."

The Supreme Court of Louisiana upheld this statute against constitutional attack in *Cooper v. Lykes*, 218 La. 251, 49 So.2d 3 (1950).

Miscellaneous

The Migratory Bird Conservation Act.

The Government's application invokes the Migratory Bird Conservation Act[18] and suggests that the decision below conflicts with the statutory scheme under which the Government acquired these lands pursuant to that statute. Apparently, the Government is seeking a decision that through the Act, Congress specifically preempted the field of government acquisitions to the exclusion of state law, thereby making applicable the *Clearfield Trust* doctrine. It is submitted that the exact opposite is true. By its very terms, the Migratory Act not only contemplated the application of state law, but actually invited such results as the enactment of Act 315 of 1940. First, the Act rather than overriding state law, recognized the rights of the several states by requiring that their consent to acquisitions by the United

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[18] 16 USC 715-715r. Subsection e is attached hereto as Appendix B.

States be given by legislative act before any purchases could be made.

Even more important is the language of Section 715e of the Act. In that section the Secretary of the Interior was required to insure safe title in the United States to the areas acquired, but this significant concession was then made:

> ". . . but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of said sections. . . ."

It must be assumed that the Secretary in acquiring the lands involved in this suit, determined that a mineral reservation could properly be made that would not interfere with the use of the area as a game refuge. This is necessarily true since he contracted for the reservation under conditions that would have permitted mineral operations for ten years and then for the possible indefinite extension of the servitude through means other than Act 315, such as drilling and obtaining production within the original ten-year period. The present suggestions of the United States that the continuance of the mineral reservation through Act 315 would have an adverse effect upon the administration of the Migratory Act simply must give way to the determination of "no interference" that necessarily was made by the Secretary in connection with these acquisitions; and, of course, such a finding of fact by the

Secretary is conclusive. *Cf. Burfenning v. Chicago, St. P., M.& O. R.R.*, 163 U.S. 321 (1896).

The Government also suggests that the provisions of Section 715e making all reservations subject to the rules and regulations of the Secretary leave no room for State regulation. Here again it must be suggested that an opposite conclusion is indicated. What Section 715e is saying simply is that mineral operations under contractual reservations in game refuges will not interfere with the proper operation and maintenance of that refuge so long as the appropriate wildlife regulations of the Secretary are complied with in conducting those operations. This is merely a recognition that multiple use of these properties is feasible under proper safeguards.

Virtually every major game refuge in Louisiana contains substantial oil and gas fields, and these are being operated in almost complete harmony with the game refuge project. The Delta Migratory Water Fowl Refuge, which includes the Leiter Minerals properties, contains hundreds of producing wells. Production is also being obtained from portions of the Lacassine Refuge in which the properties involved in this suit are located. It is submitted, therefore, that neither from a legal nor a practical standpoint can the arguments of the United States that there will be undue interference with the refuge operations be supported.

The Condemnation Proceedings.

The application of the Government (page 19) stresses that a portion of the property was acquired by con-

demnation proceedings and that in this type of acquisition, the estates and interests created by declarations of taking must be determined by federal law. On this point, it is noteworthy that only a comparatively small portion of the property was acquired by condemnation, with the remainder having been purchased by a conventional deed.[19]

If Act 315 had purported to dictate the terms of the federal condemnation there would be force in the Government's argument. This is not the case at all. The Government chose to tailor its condemnation proceedings so as to permit a mineral reservation identical in terms with the ones employed in its conventional purchases. Obviously this was done in fairness to those from whom the property was taken and to insure a uniform type of mineral reservation. The net result, however, is that the Government deliberately chose to permit the mineral reservation and once having done this, the condemned lands were in exactly the same legal position as were those actually purchased.

CONCLUSION

There are no important federal questions here which require this Court to assert the supremacy of federal law under the United States Constitution or any specific Congressional Act with respect to these isolated land transactions. For the reasons previously given, the petition for a writ of certiorari should be denied.

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[19]The stipulation of fact shows that of the 12,625 acres of land involved, only 2,574.18 were acquired in the condemnation proceeding, whereas the remaining 10,048.01 acres were acquired by a conventional act of sale.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Austin W. Lewis, attorney for Little Lake Misere Land Company, Inc., et al, and a member of the Bar of this Court, hereby certify that copies of the foregoing brief have been served in accordance with Supreme Court Rules, Rule 33, Paragraph 2(a), by depositing three copies of said brief in the United States mail, air mail postage prepaid, addressed to Erwin N. Griswold, Esq., Solicitor General, Department of Justice, Washington, D. C. 20530.

New Orleans, Louisiana, _____, 1972.

AUSTIN W. LEWIS
Attorney of Record

APPENDIX A

The Lake Misere Reservation

Reserving unto the grantor, its successors, legal representatives and assigns, and specifically excepting from this acquisition, all the oil, gas, sulphur and other minerals in, on or under said land, together with the right of investigating, exploring, prospecting, drilling and mining for and producing said oil, gas, sulphur and other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures, thereon to produce, save, take care of, treat, store, transport and manufacture said minerals and housing the employees necessary for said purposes; which rights shall remain in force for a term of ten (10) years from the date of vesting of title in the United States and as long thereafter as oil, gas, sulphur or other mineral is produced from said land, or so long thereafter as grantor shall conduct drilling or reworking operations thereon with no cessation of more than sixty (60) days consecutively until production results; and, if production results, so long as such mineral is produced.

Provided further that at the end of said ten-year period of reservation, if not extended as hereinabove provided, or at the termination of any extended period in case the operation has not been carried on after said ten-year period as hereinabove provided, the right to mine, produce and market said oil, gas, sulphur or other mineral shall terminate at the end of said ten years, and the complete fee title to said lands shall thereby become vested in the United States.

Provided that forty per cent, (40%) of one-eighth (1/8) royalty of all oil, gas, sulphur and other minerals so removed shall be paid to the United States of America until the total royalties so paid to the United States shall equal the purchase price of $12,870.90.

APPENDIX B

The Migratory Bird Conservation Act
16 U.S.C. §715e

§ 715e.

The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under sections 715-715d, 715e, 715f-715k, and 715l-715r of this title, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encumbered for the purposes of said sections, but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under said sections or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of the Interior for the occupation, use, operation, protection, and administration of

such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time.